

INTERNET  
FORM NLRB-501  
(2-08)UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER****DO NOT WRITE IN THIS SPACE**

Case

31-CA-266719

Date Filed

9/25/2020

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer The Daily Wire, LLC		b. Tel. No. (999) 999-9999
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 14958 VENTURA BLVD SUITE #233 CA Sherman Oaks 91403-____	e. Employer Representative (b) (6), (b) (7)(C)	g. e-Mail (b) (6), (b) (7)(C) dailywire.com
		h. Number of workers employed 75
i. Type of Establishment (factory, mine, wholesaler, etc.) Printing & Publishing	j. Identify principal product or service Media	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

**2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)**

--See additional page--

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**

(b) (6), (b) (7)(C)

Title:

**4a. Address (Street and number, city, state, and ZIP code)**

(b) (6), (b) (7)(C)

4b. Tel. No. (b) (6), (b) (7)(C)

4c. Cell No.

4d. Fax No.

4e. e-Mail

(b) (6), (b) (7)(C)

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)****6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By (b) (6), (b) (7)(C)

(signature of representative or person making charge)

Title: (b) (6), (b) (7)(C)

(Print/type name and title or office, if any)

Address (b) (6), (b) (7)(C)

09/25/2020 16:40:34  
(date)

Tel. No.

(b) (6), (b) (7)(C)

Office, if any, Cell No.

Fax No.

e-Mail

(b) (6), (b) (7)(C)

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)****PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

## Basis of the Charge

### 8(a)(1)

Within the previous six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by threatening to retaliate against employees if they joined or supported a union.

Name of Employer's Agent/Representative who made the statement	Approximate date
(b) (6), (b) (7)(C)	09/25/2020

## Additional Information in Support of Charge

**Charging Party Name :** (b) (6), (b) (7)(C)

**Inquiry Number :** (b) (6), (b) (7)(C)

**Date Submitted :** 09/25/2020 16:40:34

Please provide a brief description of the specific conduct involved in your charge. The information you provide may be viewed by the charged party in the event of a formal proceeding, so PLEASE DO NOT GIVE A DETAILED ACCOUNT OF YOUR CHARGE OR A LIST OF POTENTIAL WITNESSES AT THIS TIME. A Board Agent will contact you to obtain this and other detailed information after your charge is docketed. After you submit this E-Filed Charge form, you will receive a confirmation email with an Inquiry Number (Sample Inquiry Number: 1-1234567890) and a link to the E-Filing web page. You may use the link and the Inquiry number provided in the email to e-file any additional documents you wish to present in support of your charge.

### Additional Information Provided:

(b) (6), (b) (7)(C)

On September 25, 2020, (b) (6), (b) (7)(C) made a Twitter post that "quote-tweeted" another post discussing a strike. (b) (6), (b) (7)(C) wrote "I have a message for DW employees. If you ever attempt anything like this, you can consider your strike permanent." [https://twitter.com/\(b\) \(6\), \(b\) \(7\)\(C\)/status/1309542178910208000](https://twitter.com/(b) (6), (b) (7)(C)/status/1309542178910208000) This is an unlawful threat of retaliation for protected conduct. See, e.g., FDRLST Media, LLC, No. 02CA243109 (N.L.R.B. Apr. 22, 2020)

I am not an employee of the Daily Wire. I make this charge pursuant to 29 CFR § 102.9, which allows "any person" to "file a charge alleging that any person has engaged in or is engaging in any unfair labor practice affecting commerce."

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**First Amended CHARGE AGAINST EMPLOYER****INSTRUCTIONS:****DO NOT WRITE IN THIS SPACE**

Case

Date Filed

31-CA-266719

1/27/2021

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer Bentkey Ventures, LLC d/b/a Daily Wire		b. Tel. No.
		c. Cell No.
d. Address (street, city, state ZIP code) 200 Oceanside Drive, Nashville, TN 37204	e. Employer Representative (b) (6), (b) (7)(C)	f. Fax No.
		g. e-Mail (b) (6), (b) (7)(C)@dailywire.com
		h. Dispute Location (City and State) Sherman Oaks, CA
i. Type of Establishment (factory, nursing home, hotel) Printing and Publishing	j. Principal Product or Service Media	k. Number of workers at dispute location 75
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the last six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by threatening to retaliate against employees if they joined or supported a union.		

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**

(b) (6), (b) (7)(C)

**4a. Address (street and number, city, state, and ZIP code)**

(b) (6), (b) (7)(C)

**4b. Tel. No.**

(b) (6), (b) (7)(C)

**4c. Cell No.****4d. Fax No.****4e. e-Mail**

(b) (6), (b) (7)(C)

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)****6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

**Tel. No.**

(b) (6), (b) (7)(C)

**Office, if any, Cell No.**

By:

(b) (6), (b) (7)(C) (sig) (b) (6), (b) (7)(C) (son making charge)

(b) (6), (b) (7)(C) Individual

Print Name and Title

**Fax No.**

Address: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Date:

**e-Mail**

(b) (6), (b) (7)(C)

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)****PRIVACY ACT STATEMENT**

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(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 31  
11500 W OLYMPIC BLVD  
SUITE 600  
Los Angeles, CA 90064-1753

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (310) 235-7351  
Fax: (310) 235-7420

April 20, 2021

Aditya Dynar, Attorney  
New Civil Liberties Alliance  
1225 19th Street, NW, Suite 450  
Washington, DC 20036

Re: Bentkey Ventures, LLC d/b/a Daily Wire  
Case 31-CA-266719

Dear Mr. Dynar:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

A handwritten signature in black ink that reads "Mori Rubin".

Mori Rubin  
Regional Director

cc: (b) (6), (b) (7)(C)  
Bentkey Ventures, LLC d/b/a Daily Wire  
200 Oceanside Drive  
Nashville, TN 37204

(b) (6), (b) (7)(C)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER


DO NOT WRITE IN THIS SPACE

Case 31-CA-266716

Date Filed 9/25/2020

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the Region in which the alleged unfair labor practice occurred or is occurring

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>			
a. Name of Employer  The Daily Wire		b. Tel. No. (111) 111-1111	
		c. Cell No.	
		f. Fax No.	
d. Address (Street, city, state, and ZIP code)  15021 Ventura Blvd. #503 Sherman Oaks, CA 91403		e. Employer Representative  (b) (6), (b) (7)(C)	
		g. e-Mail  (b) (6), (b) (7)(C)@dailywire.com	
		h. Number of workers employed	
i. Type of Establishment (factory, mine, wholesaler, etc.)  Media Company		j. Identify principal product or service  Media Company	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)  Within the last six months, The Daily Wire, through (b) (6), (b) (7)(C) has threatened to discipline employees on account on Union and/or protected activity. The Charging Party seeks as relief that (b) (6), (b) (7)(C) be required to tweet and otherwise publicize (b) (6) severe and sincere apology and to post the appropriate Notice on the public website. (b) (6) should be required to read the Notice to all employees and make a public announcement about the Notice on his media locations of any nature.			
3. Full name of party filing charge (if labor organization, give full name, including local name and number)  The Committee to Preserve the Religious Right to Organize, Los Angeles Division			
4a. Address (Street and number, city, state, and ZIP code)  800 Wilshire Blvd., Suite 1020 Angeles, CA 90017		4b. Tel. No. 213-380-2344	
		4c. Cell No.	
		4d. Fax No. 213-443-5098	
		4e. e-Mail abelrodriguez@unioncounsel.net	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)			
6. DECLARATION  I declare that I have read the above charge and hat the statements are true to the best of my knowledge and belief.    (signature of representative or person making charge)  Address: Weinberg, Roger & Rosenfeld 800 Wilshire Blvd., Suite 1020 Los Angeles, CA 90017		Tel. No. 213-380-2344  Office, if any, Cell No.  Fax No.  e-Mail <a href="mailto:abelrodriguez@unioncounsel.net">abelrodriguez@unioncounsel.net</a> <a href="mailto:nlr notices@unioncounsel.net">nlr notices@unioncounsel.net</a>	
		Abel Rodriguez III, Attorney  (Print/type name and title or office, if any)  09/25/2020 (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 31  
11500 W Olympic Blvd., Suite 600  
Los Angeles, CA 90064-1753

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (310) 235-7351  
Fax: (310) 235-7420

April 20, 2021

Abel Rodriguez III, Esq,  
Weinberg, Roger & Rosenfeld  
800 Wilshire Blvd., Suite 1020  
Los Angeles, CA 90017

Re: The Daily Wire, LLC  
Case 31-CA-266716

Dear Mr. Rodriguez:

We have carefully investigated and considered your charge that The Daily Wire, LLC ("Charged Party") has violated the National Labor Relations Act ("the Act").

**Decision to Dismiss:** You alleged that the Charged Party violated Section 8(a)(1) of the Act when (b) (6), (b) (7)(C) sent a tweet threatening to discipline employees on account of Union and/or protected activity; however, the investigation revealed that, even assuming a violation of the Act, the Charged Party effectively repudiated the conduct consistent with *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Accordingly, I have decided to dismiss your charge.

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

**Means of Filing:** You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at [www.nlrb.gov](http://www.nlrb.gov). See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at [www.nlrb.gov](http://www.nlrb.gov). If you require additional assistance with E-Filing, please contact [E-Filing@nlrb.gov](mailto:E-Filing@nlrb.gov)).

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.



**Appeal Due Date:** The appeal is due on **May 4, 2021**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **May 3, 2021**. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before May 4, 2021**. The request may be filed electronically through the ***E-File Documents*** link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **May 4, 2021, even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,



Mori Rubin  
Regional Director

Enclosure and cc's next page

cc: Aditya Dynar, Attorney  
New Civil Liberties Alliance  
1225 19th Street, NW, Suite 450  
Washington, DC 20036



**(b) (6), (b) (7)(C)**

The Daily Wire, LLC  
200 Oceanside Drive  
Nashville, TN 37204

The Committee to Preserve the Religious  
Right to Organize, Los Angeles Division  
800 Wilshire Blvd., Suite 1020  
Los Angeles, CA 90017

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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*(Signature)*

## E-FILING TO APPEALS

1. **Extension of Time:** This document is used when the Charging Party is asking for more time to efile an Appeal.
  - If an Extension of Time is e-filed, and there are additional documents to be e-filed simultaneously with it, please e-file those documents under the selection **Correspondence**.
  - After an Extension of Time has already been e-filed, any **additional** materials to add to the Extension of Time should be e-filed under **Correspondence**.
2. **File an Appeal:** If the Charging Party does not agree with the Region's decision on the case, an Appeal can be e-filed.
  - Only **one (1) Appeal** can be e-filed to **each** determination in the Region's decision letter that is received.
  - After an Appeal has been e-filed, any **additional** materials to add to the Appeal should be e-filed under **Correspondence**.
3. **Notice of Appearance:** Either party can e-file a Notice of Appearance if there is a new counsel representing one side or a different counsel.
  - This document is only e-filed with the Office of Appeals after a decision has been made by the Region.
  - This document can be e-filed **before** an Appeal is e-filed.
4. **Correspondence:** Parties will **select** Correspondence when adding documents or supplementing the Appeal or Extension of Time.
  - Correspondence is used to e-file documents **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
5. **Position Statement:** The Charging Party or Charged Party may e-file a Position Statement.
  - The Charging Party will e-file this document as a supplement of the Appeal.
  - The Charged Party will specifically file one to support the Region's decision.
  - This document should be e-filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
6. **Withdrawal Request:** If the Charging Party decides to no longer pursue their appeal, he/she can e-file a Withdrawal Request to the Office of Appeals.
  - This document should be e-Filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.



7. The selections of **Evidence** or **Other** should no longer be used.

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 31**

**(b) (6), (b) (7)(C),**

**THE COMMITTEE TO PRESERVE THE  
RELIGIOUS RIGHT TO ORGANIZE, LOS  
ANGELES DIVISION,**

*Charging Parties,*

and

**THE DAILY WIRE, LLC,**

*Charged Party.*

Case Nos.      31-CA-266716  
                     31-CA-266719

**THE DAILY WIRE, LLC'S  
POSITION STATEMENT  
REGARDING AND OPPOSITION TO  
UNFAIR LABOR PRACTICE CHARGES**

Dated: December 7, 2020

ADITYA DYNAR  
MARK CHENOWETH  
**NEW CIVIL LIBERTIES ALLIANCE**  
1225 19th St. NW, Suite 450  
Washington, DC 20036  
(202) 869-5210  
[Adi.Dynar@NCLA.legal](mailto:Adi.Dynar@NCLA.legal)  
[Mark.Chenoweth@NCLA.legal](mailto:Mark.Chenoweth@NCLA.legal)  
*Attorneys for the Charged Party*

## INTRODUCTION

The National Labor Relations Board (NLRB or Board) proposed a pre-merit settlement agreement (Proposed Settlement, attached as Exhibit 1) that, *inter alia*, would require the Charged Party The Daily Wire, LLC (DW or Charged Party) to (1) post compliance notices, and (2) direct DW’s “agent and supervisor, (b) (6), (b) (7)(C), to delete (b) (6), September 25, 2020 statement—‘I have a message for DW employees. If you ever attempt anything like this, you can consider your strike permanent.’—from the @ (b) (6), (b) (7)(C) Twitter account.” Proposed Settlement at 4.

The proposed terms of settlement are unacceptable. The charges should be dismissed, and no complaint should issue against DW for the reasons stated below.

This Position Statement should not be construed to foreclose or waive any other argument or position that DW would take to effectively defend itself against these charges in the future.

## REASONS FOR DISMISSING THE CHARGES

1) NLRB lacks subject-matter jurisdiction to investigate or prosecute the unfair-labor-practice charges against the Charged Party. The Charging Parties are not persons “aggrieved” by the alleged “unfair labor practice” under 29 U.S.C. § 160(b). NLRB has subject-matter jurisdiction to investigate and prosecute only those charges that are filed by persons aggrieved by the alleged unfair labor practice. Charging Party (b) (6), (b) (7)(C) is not an employee, independent contractor, or intern of DW, nor is (b) (6) in privity with any person who is or could be aggrieved for purposes of 29 U.S.C. § 160(b). (b) (6), (b) (7)(C), therefore, cannot confer, and NLRB has no authority to bootstrap, subject-matter jurisdiction to investigate or prosecute (b) (6) charge against DW. Charging Party The Committee to Preserve the Religious Right to Organize, Los Angeles Division (“CPRRO”) is similarly not a person aggrieved by the alleged unfair labor practice. CPRRO is also not in privity with any person who could allege to have been satisfactorily aggrieved under 29 U.S.C. § 160(b). CPRRO, therefore, cannot confer, and NLRB has no authority to bootstrap, subject-matter jurisdiction to investigate or prosecute the charges against DW.

2) NLRB Region 31 lacks personal jurisdiction over DW. DW is a Texas limited liability company with its principal place of business in Nashville, Tennessee. None of the conduct or alleged grievance giving rise to the unfair-labor-practice charges occurred in or is even remotely connected to Region 31 in California. Region 31, therefore, has no authority to investigate or prosecute the charges against DW. There has been a watershed in personal jurisdiction law at the U.S. Supreme Court in the past decade. One outgrowth of that precedent is that defendants like DW can only be sued for certain kinds of cases where they are “at home.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). DW is not “at home” in Region 31, and it is not subject to suit there on this allegation—regardless of what the Charging Parties might believe.

3) Service of the two charges against DW has not been perfected by the two Charging Parties. 29 C.F.R. § 102.14(a) states that it is the “Charging Party’s obligation to serve.” “Upon the filing of a charge, the Charging Party is responsible for the timely and proper service of a copy upon the person against whom such charge is made. Service may be made personally, or by registered mail, certified mail, regular mail, private delivery service, or facsimile. With the permission of the person receiving the charge, service may be made by email or by any other agreed-upon method.” *Id.* The NLRB Regulation further states that the “Regional Director will, as a matter of courtesy, serve a copy of the charge on the charged party in person, or send it to the charged party by regular mail, private delivery service, email or facsimile transmission, in any manner provided for in Rules 4 or 5 of the Federal Rules of Civil Procedure, or in any other agreed-upon method. *The Region will not be responsible for such service.*” 29 C.F.R. § 102.14(b) (emphasis added). The Charging Parties (*i.e.*, (b) (6), (b) (7)(C) and CPRRO) have not perfected service on DW. DW has not given permission to the Charging Parties for service to be made by email or by any other agreed-upon method. DW has not otherwise consented to service of the charges by Charging Parties by email or by a method other than “personally, or by registered mail, certified mail, regular mail, private delivery service, or facsimile.” 29 C.F.R. § 102.14(a). Without perfected service, NLRB does not yet have authority to investigate or prosecute the charges that the Charging Parties apparently filed with NLRB but did not serve on the Charged Party, as is required under NLRB’s own codified regulations.

- 4) There are at least two factual grounds for dismissing the charges against DW:
- a. DW already acted within hours of (b) (6), (b) (7)(C) September 25, 2020 tweet by sending an email to all employees, titled, “Your rights under the National Labor Relations Act,” which included a link to NLRB’s employees-rights poster. The email screenshot is attached as Exhibit 2.
  - b. Within hours of (b) (6), (b) (7)(C) first tweet, (b) (6), (b) (7)(C) published a second tweet stating that “DW employees have the same NLRA protections as everyone else,” and attached NLRB’s employees-rights poster to that tweet. The tweet is attached as Exhibit 3.

These two measures, standing alone or taken together, are a sufficient demonstration of DW’s good-faith compliance with the National Labor Relations Act, assuming such compliance were required or otherwise necessary in this instance. There is, therefore, no basis to further investigate or prosecute the charges against DW.

5) DW and (b) (6), (b) (7)(C) have a right to speak freely that is guaranteed by the First Amendment to the United States Constitution and 29 U.S.C. § 158(c). Neither the Charging Parties, NLRB, nor anyone else, has or can have editorial control over DW’s or (b) (6), (b) (7)(C) publications—including (b) (6) tweets. Any further investigation or prosecution of the charges will therefore infringe upon the First Amendment and 29 U.S.C. § 158(c) rights of the Charged Party. The Charging Parties have provided no independent proof of threat. The tweet itself “shall not be evidence of an unfair labor practice” unless there is proof, independent of the statement, that shows the statement “contains ... threat of reprisal or force or promise of benefit.” *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). Furthermore, “an employer is free to communicate to his employees any of his general views about unionism”; “conveyance of the employer’s belief” is not actionable under the NLRA “unless” the threat “is capable of proof.” *Id.* at 618–19.



*Joel Fleming v. FDRLST Media, LLC*, 370 NLRB No. 49, 2020 WL 6940901 (Nov. 24, 2020),<sup>1</sup> is inconsistent with well-established Supreme Court precedent on subject-matter jurisdiction, personal jurisdiction, the First Amendment, and 29 U.S.C. § 158(c). NLRB is bound to follow Supreme Court precedent. The *FDRLST Media* case is currently pending on appeal in the U.S. Court of Appeals for the Third Circuit. *See FDRLST Media, LLC v. NLRB & Joel Fleming*, Case No. 20-3434 (3d Cir. Dec. 1, 2020), and as of this writing NLRB has neither filed a cross-appeal nor sought enforcement of the Board's disputed November 24, 2020 Decision and Order. Until *FDRLST Media* exhausts its appeals, and the neutral and independent federal appellate courts decide whether NLRB has subject-matter and personal jurisdiction, and whether its investigation and prosecution of such alleged unfair labor practices violates the First Amendment or 29 U.S.C. § 158(c), the Board's disputed November 24 Decision and Order in *FDRLST Media* has neither precedential force nor any other bearing on NLRB's potential investigation or prosecution of DW.

Further, even assuming *FDRLST Media* has any bearing on this case, the alleged unfair labor practice occurred on September 25, 2020, and (b) (6), (b) (7)(C) and CPRRO's charges against DW were both filed on September 25, 2020. The two charging documents are attached as Exhibits 4 and 5. The Board issued the *FDRLST Media* decision a full month later, on November 24, 2020. That November decision cannot be applied retroactively to the alleged unfair labor practice that occurred *before* the decision was issued. If applied retroactively, such application of *FDRLST Media* to DW violates the Due Process Clause of the Fifth Amendment because at the time the alleged unfair labor practice occurred, the Charged Party had no notice (to the extent *FDRLST Media* can be construed to clearly establish this particular precedent) that a public persona's publishing of views on a topic of public concern to the public at large is *per se* a violation of the National Labor Relations Act.

The First Amendment, the Due Process Clause of the Fifth Amendment, and 29 U.S.C. § 158(c) therefore currently constrain NLRB's investigation or prosecution of these two charges against DW.

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<sup>1</sup> (b) (6), (b) (7)(C)

## CONCLUSION

(b) (6), (b) (7)(C) and CPRRO's charges against DW should be dismissed, and no complaint should issue.

Respectfully submitted,

Dated: December 7, 2020

/s/ Aditya Dynar

ADITYA DYNAR

MARK CHENOWETH

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March 17, 2021

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**Re: Charging Party's Response to Daily Wire's Position re Employer Status**

Dear Ms. Laufer,

Please consider this letter the Charging Party's response to your inquiry on March 5, 2021 regarding its position on whether the Daily Wire is an employer within the meaning of the National Labor Relations Act.

The Daily Wire's position that it is not an employer is contradictory to statements made by its own (b) (6), (b) (7)(C) and inconsistent with reality. On September 16, 2020 (b) (6), (b) (7)(C) announced that the Daily Wire would be relocating to Nashville, Tennessee. In (b) (6), (b) (7)(C) announcement, (b) (6), (b) (7)(C) declares that "We're taking all 75 of our jobs and we're taking our tens of millions of dollars in annual revenue and we are moving all of that outside the state of California." See (b) (6), (b) (7)(C) It is strange that despite claiming that the Daily Wire was responsible for 75 jobs, that it now claims it has no employees. Moreover, the Daily Wire has recently expanded into entertainment and more specifically, film according to an Axios interview with (b) (6), (b) (7)(C). See (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) The Daily Wire even has a scripted series in development. This expansion into entertainment cannot realistically be done without having employees: writers, actors, and production crew. Unsurprisingly, this same article from Axios, posted (b) (6), (b) (7)(C), 2021, claims that the Daily Wire currently has 115 employees. It is unlikely that the author, (b) (6), (b) (7)(C) simply drew that claim from thin air rather than collected that information directly from (b) (6), (b) (7)(C)

Sincerely,



Abel Rodriguez